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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1930.

No. 350.

EDUCATIONAL FILMS CORPORATION OF AMERICA,
Appellant,

vs.

HAMILTON WARD, Attorney General of the State of New York, and THOMAS M. LYNCH, JOHN J. MERRILL and MARK GRAVES, comprising the NEW YORK STATE TAX COMMISSION,
Appellees.

STATEMENT AS TO JURISDICTION ON APPEAL.

ROGER HINDS,
Counsel for Appellant.

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IN THE

Supreme Court of the United States,

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HAMILTON WARD, Attorney General of the State of New York, and THOMAS M. LYNCH, JOHN J. MERRILL and MARK GRAVES, comprising the NEW YORK STATE TAX COMMISSION,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Statement as to Jurisdiction on Appeal.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

(a) STATUTORY PROVISION SUSTAINING JURISDICTION.

The act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938, (United States Code, Title 28, Section

345), provides that Section 238 of the Judicial Code is amended to read in part as follows:

> "Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> * * * * *
>
> "(3) An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, 'The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.'"

This is an appeal from a final decree dismissing the complaint on the merits and denying a permanent injunction in a suit to suspend enforcement of the statute of a state and denying an interlocutory injunction in said suit.

(b) DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was entered on June 10, 1930 (R., 40, 42)*.

The Application for Appeal was presented on July 18, 1930 (R., 42).

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*All references to the record are to the pages of the typewritten record as prepared by the clerk of the District Court. The record has not yet been printed.

(c) THE NATURE OF THE CASE.

Appellant brought a bill for an injunction in the District Court of the United States for the Southern District of New York to restrain the defendants comprising the New York State Tax Commission and the Attorney General of the State of New York from proceeding further with the levy and collection of a franchise tax pursuant to Article 9A of the New York Tax Law based on the net income of the plaintiff-appellant corporation for the year ending June 30, 1929 in so far as said tax is measured by income on royalties received by plaintiff from copyrights owned by plaintiff and granted by the United States of America (i. e. to the extent of $7,316.51 of said tax) on the ground that the aforesaid statute and said tax and the collection and levy thereof are in contravention and violation of the Constitution of the United States, and particularly Section 8, Article 1 thereof, as imposing a state tax upon income from an instrumentality of the United States and upon means employed by Congress to carry into effect the powers conferred upon it by the Constitution (R., 4 to 13 and 43, 44).

As required by Section 266 of the Judicial Code, District Judge Bondy called to his assistance to hear and determine the application for an interlocutory injunction Circuit Judge Chase and District Judge Woolsey (R. 3). The application and defendants' motion to dismiss the bill of complaint (R., 28) were heard by the three judges on March 8, 1930. The statutory court thus created, upon an opinion by Circuit Judge Chase (R., 31), denied the application for interlocutory judgment and dismissed the bill of complaint, as amended, upon the merits (R., 40, 41).

The jurisdiction of the federal court was invoked on the ground of the alleged federal unconstitutionality of the said Article 9A of the New York Tax Law.

The matter in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000.

Application for appeal from the decree was presented and allowed on July 18, 1930 (R., 42).

(d) Cases believed to sustain jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Cudahy Packing Company v. *Hinkle, et al.*, 278 U. S. 460;
St. Louis & S. W. R. R. Co. v. *Nettin*, 277 U. S. 15;
Clark v. *Poor*, 274 U. S. 554;
Smith v. *Wilson*, 273 U. S. 388, 391;
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317, 320;
Ex parte Buder, 271 U. S. 461, 464-465;
Pacific Telephone & Telegraph Co. v. *Kuykendall*, 265 U. S. 196, 206;
Shaffer v. *Carter*, 252 U. S. 37, 44.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925.

Respectfully submitted,

Roger Hinds,
Counsel for Appellant.